



REQUEST FOR QUALIFICATIONS

ENVIRONMENTAL LITIGATION

The City of Milpitas, with a population of 70,092 and located southeast of the San Francisco Bay, is adjacent to a sanitary landfill, composting and recycling facility ("Facility"). The Facility, located on the Milpitas/San Jose border, has been in continuous operation for more than 75 years. Unfortunately, the Facility generates significant odors from its landfill and composting operations. Prevailing winds in the area push the unpleasant odors and particulates into neighborhoods located in Milpitas.

Milpitas citizens have been concerned for years about the odor problem. Unfortunately it appears the landfill operators' desire is to continue operations and perhaps expand composting and food waste recycling, with no real plan to significantly address odors which plague Milpitas residents on a daily basis.

Milpitas seeks an experienced litigation team to create and put into action a plan ultimately resulting in cessation of all Facility-created odors. How your firm might be qualified to tackle this ongoing nuisance should be addressed in your response to this Request for Qualifications.

Firms interested in assisting Milpitas in achieving its goal of eliminating odor and particulate emissions from the Facility are encouraged to apply for this challenging work to create meaningful beneficial change to the living environment of an entire City. The goal may not be easily accomplished, but Milpitas is committed to the long-term elimination of this problem. Send your Statement of Qualifications to bring your expertise and experience to the aid of Milpitas in seeking cleaner, odor free air for future generations.

Included with this cover memo are the following documents comprising the Request for Qualifications packet:

- 1. REQUEST FOR QUALIFICATIONS- Environmental Litigation
Appendix One: Statement of Qualifications form
Appendix Two: Exemplar Agreement form**

RESPONSES DUE: OCTOBER 31, 2014

FAQs

- 1) When was the RFQ released?
 - a. The RFQ for Environmental Litigation was released on September 19, 2014.

- 2) Who do I contact if I have some questions about the RFQ process?
 - a. You can send your questions via email to caorfq@ci.milpitas.ca.gov.

- 3) When is the deadline for questions and objections?
 - a. All questions and objections must be received no later than October 13, 2014, at 5:00 PM (Pacific Daylight Time).

- 4) When is the deadline for the RFQ?
 - a. All required documentation must be received no later than October 31, 2014, at 5:00 PM (Pacific Daylight Time).

- 5) How can I submit the Statement of Qualifications (SOQ)?
 - a. Completed SOQ must be submitted via e-mail to the Office of the City Attorney at caorfq@ci.milpitas.ca.gov. We are not responsible for undelivered e-mail.

REQUEST FOR QUALIFICATIONS

RFQ ENVIRONMENTAL LITIGATION

RFQ NAME:

Legal Services Related to Landfill Odor Nuisance and Environmental Regulatory Violation Litigation

RFQ release date:	September 19, 2014
Procurement Contact:	Michael J. Ogaz, City Attorney
Address:	Office of the City Attorney 455 E. Calaveras Blvd. Milpitas, CA, 95035
E-mail address:	caorfq@ci.milpitas.ca.gov
Deadline for questions and objections:	Must be received no later than October 13, 2014, at 5:00 p.m. (Pacific Daylight Time)
Deadline for addenda	Will be posted no later than October 17, 2014
Response due date:	Must be received no later than October 31, 2014
Time:	5:00 p.m. (Pacific Daylight Time)
Location:	Email submitted to: caorfq@ci.milpitas.ca.gov

Request for Qualifications

Legal Services Related to Landfill Odor Nuisance and Environmental Regulatory Violation Litigation

GENERAL INFORMATION

The Office of the City Attorney of the City of Milpitas (the "City") is seeking one or more law firms to provide litigation services and advice on a litigation strategy including accumulation of evidentiary material and data supportive of a nuisance or regulatory violation lawsuit directed at the elimination of odor or activities causing odor, air pollution or health risks originating at the Newby Island Resource and Recovery Park ("NIRRP") located on the Milpitas/San Jose border at 601 Dixon Landing Road, #1, Milpitas, California.

Generally, the scope of work for the selected firm or firms will include the services listed below under the direction of the City Attorney's Office:

1. Advise the City on the regulatory framework governing landfill operations in California as applicable to the NIRRP, and the best long-term strategy including the creation of a database of violations or odor incidents and use of experts to support the filing of litigation on either a nuisance or regulatory violation basis resulting in the elimination of odors from NIRRP or the complete closure of NIRRP.
2. Advise the City on the available legal theories that might be utilized in the litigation and the probability of success and the estimated cost of a long-term strategy with the ultimate goal of eliminating odors from NIRRP.
3. Representation of the City in such litigation, both at the lower court and, if necessary, the appellate court levels.

I. PROCUREMENT PROCESS AND STATEMENT OF QUALIFICATION REQUIREMENTS

Procurement Process

This Request for Qualifications ("RFQ") may be downloaded from the Milpitas City Website located at www.ci.milpitas.ca.gov. Access the box marked "RFQ Environmental Litigation." All addenda and notices related to this procurement will be posted by the City on the "RFQ Environmental Litigation" box site. In the event that this RFQ is obtained through any means other than from the City Website, the City will not be responsible for the completeness, accuracy, or timeliness of the final RFQ document.

The City will not be responsible for, nor be bound by any oral instructions or explanations issued by its representatives. Contact with City representatives other than as listed in this section is grounds for disqualification. **Questions or requests for additional information or clarifications regarding this RFQ must be sent to the email address listed on page 1 of this RFQ.** The City's response will be in the form of an addendum to this RFQ which will be posted to the "RFQ Environmental Litigation" box site, as referenced above. All addenda shall become part of this RFQ. Applicants should check the "RFQ Environmental Litigation" box site through the addenda deadline date of October 17, 2014, to determine whether any addenda have been issued.

Please take note that the deadline for the City's receipt of inquiries or requests for clarifications is 5:00 p.m. (Pacific Daylight Time) on October 13, 2014. We will not respond to inquiries or requests for clarifications received after the deadline.

Statement of Qualifications

The Statement of Qualifications ("SOQ") submitted in response to this RFQ must be submitted in the form of the document attached as **Appendix 1**. Please use a typeface

font of no less than **12 point**. Appendices and attachments **are not required** to use a typeface font of at least 12 point. Please take care that all attachments and appendices are readable.

Each SOQ will be reviewed to determine if all required documentation and information was included with the submittal and if the proposer has met the minimum qualifications specified in Section II.

SOQs must be sent via email addressed to caorfq@ci.milpitas.ca.gov and clearly labeled “City Attorney Request for Qualifications” and must be received no later than 5:00 p.m. (Pacific Daylight Time) on October 31, 2014. Late submissions will not be considered. Please use PDF (portable document format) for the submission of your SOQs. Respondents should not include any executable or zip files in or with their SOQs because the City’s e-mail servers may filter out any such files. If you have problems submitting an SOQ, contact Susan Barrett directly at (408) 586-3044, or by email at sbarrett@ci.milpitas.ca.gov.

II. MINIMUM QUALIFICATIONS

If a proposer fails to provide the required documentation and information or fails to meet the minimum qualifications specified below, the SOQ will be deemed nonresponsive. A nonresponsive SOQ will be eliminated from further consideration.

A. California Bar Membership

Attorneys of the firm who provide services to the City must be members in good standing of the State Bar of California or qualified to represent the City Pro Hac Vice in association with the City Attorney under the California Rules of Court. (Rule 9.40)

B. Experience

The lead attorney(s) designated by a selected firm (the “Lead Attorney(s)”) must have at least ten (10) years of litigation experience with recent experience regarding air pollution, toxic litigation, landfill closure, environmental regulation or public nuisance litigation and should be familiar with the Clean Air Act and have experience with the Bay Area Air Quality Management District (BAAQMD) or equivalent regulatory agency.

III. STATEMENT OF QUALIFICATION QUESTIONS

Please complete the form SOQ attached to this RFQ as **Appendix 1**. The SOQ must address each of the questions listed in the form Statement of Qualifications in the order specified. You are not limited to the space indicated on the form for your responses. However, we expect the responses to be concise. The attachment of a firm resume or brochure instead of responding to one or more of the questions set forth in Section III is **strongly discouraged and may negatively impact the evaluation of the Statement of Qualifications**.

IV. SELECTION PROCESS AND EVALUATION CRITERIA

A. Selection Process

Set forth below are the criteria that the City will use to evaluate responses to this RFQ. The City Attorney or his designee(s) will evaluate the SOQs of the firms that have met the minimum qualifications. The City reserves the right to interview prospective firms prior to making its selection. The City Attorney's Office also reserves the right to rely on information from sources other than the information provided by the proposers in selecting the successful proposer.

B. Exemplar Agreement

A selected firm will enter into a written agreement with the City for performance of the services specified in this RFQ. An exemplar of the standard City agreement is attached to this RFQ as **Appendix 2** (the "Exemplar Agreement").

Proposers should submit any questions regarding the terms and conditions specified in the Exemplar Agreement using the process for submission of questions described in Section I of this RFQ.

If a proposer desires the City to consider making any changes to the standard terms and conditions set forth in the Exemplar Agreement, the proposer must submit such request in its SOQ in response to Item J in **Appendix 1**.

C. Evaluation Criteria

The City will evaluate responses to this RFQ based on the following factors.

Evaluation Criteria (100 points total)	
1.	<u>Firm Experience (25 points total)</u> Experience advising California local agencies or private operators or citizen groups on State and federal air quality regulations, specifically those applicable to odor causing activities and/or experience with landfill or waste disposal regulation, landfill site closure or related nuisance litigation. (25 points)

2. **Assigned Staff (45 points total).**
 - a. Professional and educational qualifications. **(5 points)**
 - b. Experience creating a litigation strategy and plan regarding a nuisance action or regulatory violation action with the ultimate goal of eliminating odors or other nuisance activity. Knowledge of nuisance or regulatory enforcement tools is desirable, especially as applicable to landfill operations or other sources of odor. Experience creating a long-term litigation strategy including the use of scientific experts and data gathering resources is important. Experience with landfill closure or reuse is desirable. **(40 points)**
3. **Fee Structure (15 points).**
4. **Ability to Meet the City's Requirements (15 points).**
 - a. Responsiveness to City's requirements including the Exemplar Agreement attached as **Appendix 2**.
 - b. Pending litigation/admin. proceedings with client or prior removal from a legal services engagement with another public entity.
 - c. Responsiveness of SOQ, taking into account the overall organization and quality of SOQ, including cohesiveness, conciseness, clarity of response and attention to detail.

D. Grounds for Disqualification

Generally, the grounds for disqualification include:

1. Contact regarding this procurement with any City official or employee or evaluation team member other than Susan Barrett or the Procurement Contact from the time of issuance of this solicitation until the end of the protest period.
2. Evidence of collusion, directly or indirectly, among Proposers in regard to the amount, terms, or conditions of this proposal.
3. Influencing any City staff member or evaluation team member at any time during the solicitation process, including the development of specifications.
4. Evidence of submitting incorrect information in the response to a solicitation or misrepresenting or failing to disclose material facts during the evaluation process.

5. Offering gifts or souvenirs, even of minimal value, to City officers or employees.
6. Existence of any lawsuit, unresolved contractual claim or dispute between Proposer and the City.
7. Evidence of Proposer's inability to successfully complete the responsibilities and obligations of the proposal.
8. Proposer's default under any City agreement, resulting in termination of such Agreement.

V. MISCELLANEOUS MATTERS

A. Public Nature of Proposal Material

All correspondence with the City including responses to this RFQ will become the exclusive property of the City and will become public records under the California Public Records Act (Cal. Government Code Section 6250 et seq.) except that the documents submitted by the successful applicant regarding a proposed litigation strategy shall be considered confidential attorney work-product. Otherwise, all documents that you send to the City will be subject to disclosure if requested by a member of the public. There are a very limited number of narrow exceptions to this disclosure requirement.

After the announcement of the selected firm(s), all proposals received in response to this RFQ will be subject to public disclosure. If you believe that there are portion(s) of your proposal which are exempt from disclosure under the Public Records Act, you must mark it as such and state the specific provision in the Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. For example, if you submit trade secret information, you must plainly mark the information as "Trade Secret" and refer to the appropriate section of the Public Records Act which provides the exemption as well as the factual basis for claiming the exemption.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City may not be in a position to establish that the information that a proposer submits is a trade secret. If a request is made for information marked "Confidential," "Trade Secret" or "Proprietary," the City will provide proposers who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction.

B. Costs

All costs associated with responding to this request are to be borne by the proposer.

C. Effect of RFQ

The City reserves the right to terminate this process at any time, to accept or reject any or all SOQs, to alter the selection process in any way, to postpone the selection process for its own convenience at any time, and to waive any defects in the SOQ. The City is not obligated to proceed with hiring any counsel as a result of this RFQ.

This RFQ process shall in no way be deemed to create a binding contract or agreement of any kind between the City and the selected proposer. The City's standard form Exemplar Agreement will form the basis of the contract between the parties.

D. Nondiscrimination

It is the City's policy that any firm with which it contracts shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of City contracts.

E. Gift Prohibition

City officials are subject to several legal and policy limitations regarding receipt of gifts from persons, firms, or corporations either engaged in business with the City, or proposing to do business with the City. The offering of any illegal gift shall be grounds to disqualify a respondent to this RFQ. To avoid even the appearance of impropriety, proposers should not offer any gifts or souvenirs, even of minimal value, to City officers or employees.

F. Objections and Protests

1. Any objections to the structure, content or distribution of this RFQ must be submitted in writing to the Procurement Contact by email no later than **5:00 p.m. (Pacific Daylight Time) on October 13, 2014**. Objections must be as specific as possible and identify the section number and title, as well as a description and rationale for the objection.
2. The ultimate selection of a firm for purposes of this RFQ is in the sole discretion of the City Council. While correspondence asserting an objection or protest to the selection may be sent, no formal objection or protest process is allowed.

G. Additional Matters

1. The City reserves the right to waive any informality or irregularity in any SOQ.
2. The City reserves the right to negotiate the fees of any firm selected.

APPENDIX 1

STATEMENT OF QUALIFICATIONS

INSERT NAME OF FIRM: _____

A. Minimum Qualifications

Please state whether your firm meets the minimum qualifications specified in Section II as follows:

1. California Bar Membership. For the minimum qualification specified in Section II.A, please respond to Question C, subparts 1 a and b, below.
2. The Lead Attorney(s) must have at least ten (10) years experience litigating complex regulatory matters. Please complete Question D.1. below.

B. Firm Experience

In an appendix, briefly describe your firm's practice and provide a short history of the firm. Please indicate in particular the firm's experience with advising clients on environmental issues, particularly air quality issues or odor issues; experience litigating complex regulatory matters, particularly the Clean Air Act or matters before the Bay Area Air Quality Management District (BAAQMD) or representation of a public entity or members of the public on public nuisance matters; experience handling environmental issues relative to landfill operations, particularly dealing with odor or particulate matter pollution of nearby land users including urban residences and trial experience relative thereto .

C. Attorneys to be Assigned

1. Please provide the following information for **each attorney** proposed to be assigned to work specified in this RFQ. Please designate the attorney who will serve as the Lead Attorney and each attorney who will be assigned to assist them. If there are co-Lead Attorney(s), please identify their respective areas of expertise.

Complete Information for the Lead Attorney(s):

- a. Name.
- b. Date of Admission to the California Bar/Other State Bar. If the latter, confirm eligibility to represent the City Pro Hac Vice in

association with the City Attorney under California Rules of Court, Rule 9.40.

- c. Description of any pending disciplinary proceedings in California or elsewhere.
- d. Office location.
- e. Length of employment with the firm.
- f. Limitations on the Lead Attorney's ability to oversee the transaction, such as other firm management responsibilities and/or travel to oversee other's clients' transactions, and the Lead Attorney's method of addressing these potential limitations.
- g. Has the Lead Attorney ever been removed or asked to resign from handling a matter for a client? If so, please describe the circumstances.

Complete Information for other assigned attorneys:

- a. Name
 - b. Date of Admission to the California Bar/Other State Bar.
 - c. Description of any pending disciplinary proceedings in California or elsewhere.
 - d. Office location.
 - e. Length of employment with the firm.
2. Please also attach as an appendix the resume of each attorney to be assigned.

D. Experience of Lead Attorney(s) and Other Assigned Attorneys

- 1. The Lead Attorney(s) must have at least ten (10) years experience litigating complex matters with emphasis on environmental regulatory or nuisance abatement including the formulation of long-term litigation strategies, marshalling experts and scientific evidence. Must be facile with scientific data and capable of communicating with scientific experts on matters relevant to the source of air pollution and odor pollution from a geographical location subject to changing environmental conditions and alternate odor sources. Must be capable of orchestrating and executing a litigation plan with the ultimate goal of eliminating odors from landfill site and/or cessation of all landfill, composting or other waste-related activities at a landfill site.

Please provide the experience of the designated Lead Attorney(s) with respect to these Minimum Qualifications, describing Lead Attorney litigation experience in the designated areas, including jury trial experience; describing the case, the case name, the jurisdiction and the outcome.

Response:

2. If not covered by question D.1., above, please describe the experience of each Lead Attorney with respect to representing clients in environmental or nuisance based litigation.

Response:

3. For the period from January 1, 2009 to present, please address the experience of any other attorneys to be assigned.

Response:

E. Fee Structure

1. The standard hourly rate of each attorney and paralegal who would be assigned to the transaction; or alternatively, the formula by which fees are set per transaction.

Response:

2. A list of reimbursable expenses and the rate charged for each.

Response:

3. Any reduced fees offered to other municipalities, governmental entities or nonprofit organizations.

Response:

4. Any other fees or charges.

Response:

F. References

Please provide two (2) references for the Lead Attorney, including the reference's name, title, contact information and the description of the matters on which the attorney worked. It is our preference that at least one (1) of the references be in-house counsel for a California public agency for which the Lead Attorney provided services identified in this RFQ.

Response:

G. Conflict of Interest

Please identify any potential conflicts of interest your firm might have in providing services to the City.

Response:

H. Litigation or Administrative Proceedings

1. Please state whether or not there is any pending litigation involving the firm or any attorney in the firm arising from legal services provided by the attorney or the firm. If the answer is yes, please describe the nature and the status of the litigation.

Response:

2. Are there any pending criminal or administrative actions (including disciplinary matters) involving the firm or any attorney in the firm which arise from legal services provided by the attorney or the firm? If yes, please describe the nature of such actions and the status. Please limit the response to this question to: (a) malpractice claims and (b) other actions which if an adverse result were to occur would negatively impact the ability of the attorney/firm to render legal services to the City.

Response:

3. For the types of actions described above in questions 1 and 2, please state whether any such actions have been brought or filed since January 1, 2008, but have been resolved. If there are any such actions, please describe the nature of action and its resolution.

Response:

I. Debarments or Suspensions

Please indicate whether your firm, or any individual attorneys who are principals, partners or employees of your firm, have been debarred or suspended by any public entity from obtaining or performing a contract.

Response:

J. Issues with the Exemplar Agreement

Please describe any issues or concerns with the Exemplar Agreement.

Response:

SUBMITTED BY:

FIRM NAME

BY: _____
ATTORNEY NAME
TITLE

APPENDIX 2
EXEMPLAR AGREEMENT

**AGREEMENT FOR LEGAL SERVICES
BETWEEN
THE CITY OF MILPITAS
AND**

THIS AGREEMENT is made and entered into this ____ day of _____ 2014, by and between the CITY OF MILPITAS, a municipal corporation of the State of California (hereinafter "CITY"), and _____, a _____ (hereinafter "ATTORNEY").

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. SCOPE OF SERVICES.

ATTORNEY shall perform those services specified in detail in EXHIBIT A, entitled "SCOPE OF SERVICES", which is attached hereto and incorporated herein.

SECTION 2. TERM OF AGREEMENT.

The term of this AGREEMENT shall be from _____ through _____, inclusive, subject to the provisions of SECTION 10 of this AGREEMENT.

SECTION 3. COMPENSATION.

The compensation to be paid to ATTORNEY, including both payment for professional services and reimbursable expenses, shall not exceed _____ Dollars (\$_____). The rate and schedule of payment is set out in EXHIBIT B, entitled "COMPENSATION," which is attached hereto and incorporated herein.

SECTION 4. METHOD OF PAYMENT.

Each month, ATTORNEY shall furnish to the CITY a statement of the work performed for compensation during the preceding month. Such statement shall also include a detailed record of the month's actual reimbursable expenditures.

SECTION 5. INDEPENDENT CONTRACTOR.

It is understood and agreed that ATTORNEY, in the performance of the work and services agreed to be performed by ATTORNEY, shall act as and be an independent contractor and not an agent or employee of CITY; and as an independent contractor, ATTORNEY shall obtain no rights to retirement benefits or other benefits which accrue to CITY's employees, and ATTORNEY hereby expressly waives any claim it may have to any such rights.

SECTION 6. ASSIGNABILITY.

The parties agree that the expertise and experience of ATTORNEY are material considerations for this AGREEMENT. ATTORNEY shall not assign or transfer any interest in this AGREEMENT nor the performance of any of ATTORNEY's obligations hereunder, without the prior written consent of CITY, and any attempt by ATTORNEY to so assign this AGREEMENT or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 7. INDEMNIFICATION.

ATTORNEY shall defend, indemnify and hold harmless CITY, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from work performed under this AGREEMENT due to the willful or negligent acts (active or passive) or omissions by ATTORNEY's officers, employees or agents. The acceptance of said services and duties by CITY shall not operate as a waiver of such right of indemnification.

SECTION 8. INSURANCE REQUIREMENTS.

ATTORNEY agrees to have and maintain the policies set forth in EXHIBIT C, entitled "INSURANCE," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Finance or the City Attorney of the City of Milpitas as to form and content. These requirements are subject to amendment or waiver if so approved in writing. ATTORNEY agrees to provide CITY with a copy of said policies, certificates and/or endorsements before work commences under this AGREEMENT.

SECTION 9. NONDISCRIMINATION.

ATTORNEY shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

SECTION 10. TERMINATION.

- A. CITY shall have the right to terminate this AGREEMENT, without cause, by giving not less than ten (10) days' written notice of termination.
- B. If ATTORNEY fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, CITY may terminate this AGREEMENT immediately upon written notice.
- C. CITY's City Attorney is empowered to terminate this AGREEMENT on behalf of CITY.
- D. In the event of termination, ATTORNEY shall deliver to CITY copies of all reports, documents, and other work performed by ATTORNEY under this AGREEMENT, and upon receipt thereof, CITY shall pay ATTORNEY for services performed and reimbursable expenses incurred to the date of termination.

SECTION 11. GOVERNING LAW.

CITY and ATTORNEY agree that the law governing this AGREEMENT shall be that of the State of California.

SECTION 12. COMPLIANCE WITH LAWS.

ATTORNEY shall comply with all applicable laws, ordinances, codes and regulations of the federal, State and local governments.

SECTION 13. CONFIDENTIAL INFORMATION.

All data, documents, discussions or other information developed or received by or for ATTORNEY in performance of this AGREEMENT are confidential and not to be disclosed to any person except as authorized by CITY, or as required by law.

SECTION 14. OWNERSHIP OF MATERIALS.

All reports, documents or other materials developed or discovered by ATTORNEY or any other person engaged directly or indirectly by ATTORNEY to perform the services required hereunder shall be and remain the property of CITY without restriction or limitation upon their use.

SECTION 15. WAIVER.

ATTORNEY agrees that waiver by CITY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by ATTORNEY shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

SECTION 16. ATTORNEY'S BOOKS AND RECORDS.

A. ATTORNEY shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to CITY for a minimum period of three (3) years, or for any longer period required

by law, from the date of final payment to ATTORNEY pursuant to this AGREEMENT.

- B. ATTORNEY shall maintain all documents and records which demonstrate performance under this AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.

- C. Any records or documents required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit at no cost to CITY, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at ATTORNEY's address indicated for receipt of notices in this AGREEMENT. ATTORNEY acknowledges that under certain circumstances specified in California Government Code Section 8546.7, this AGREEMENT (if it involves an expenditure of \$10,000 or more of public funds) may be subject to examination and audit by the Auditor of the State of California pursuant to California Government Code Section 8546.7.

- D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of ATTORNEY's business, CITY may, by written request by any of the above-named officers, require that custody of the records be given to CITY and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by ATTORNEY, ATTORNEY's representatives, or ATTORNEY's successor-in-interest.

SECTION 17. CONFLICT OF INTEREST.

ATTORNEY shall avoid all conflict of interest or appearance of conflict of interest in performance of this AGREEMENT. As of the date of entering into this AGREEMENT, ATTORNEY's employees assigned to perform services as specified in EXHIBIT A of this AGREEMENT ("ATTORNEY's Assigned Employees") shall not be required to complete and file a Form 700 with CITY's Clerk. In the event that the CITY subsequently determines to require ATTORNEY's Assigned Employees to complete and file a Form 700 with CITY's Clerk, CITY will notify ATTORNEY in writing of such requirement, including without limitation, instructions regarding the categories of economic interests subject to disclosure on the Form 700 ("Form 700 Notice"). ATTORNEY shall cause ATTORNEY's Assigned Employees to complete and file the Form 700 with CITY's Clerk and to submit a copy to Procurement Contact, in accordance with the instructions specified in the Form 700 Notice, no later than thirty (30) days of the date of the Form 700 Notice.

SECTION 18. GIFTS.

- A. ATTORNEY is familiar with CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in City of Milpitas Standard Operating Procedure No. 16-1.
- B. ATTORNEY agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter.
- C. The offer or giving of any prohibited gift shall constitute a material breach of this AGREEMENT by ATTORNEY. In addition to any other remedies CITY may have in law or equity, CITY may terminate this AGREEMENT for such breach as provided in SECTION 10 of this AGREEMENT.

SECTION 19. NOTICES.

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY:

Office of the City Attorney
Attn: Michael Ogaz, City Attorney
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035

To ATTORNEY:

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

SECTION 20. VENUE.

In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the State courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

SECTION 21. INTERPRETATION, PRIOR AGREEMENTS AND AMENDMENTS.

This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. In the event that the terms specified in any of the Exhibits attached hereto conflict with any of the terms specified in the body of this AGREEMENT, the terms specified in the body of this AGREEMENT shall control. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may be modified only by a written amendment duly executed by the parties to this AGREEMENT.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

“CITY”

APPROVED AS TO FORM:

CITY OF MILPITAS, a municipal corporation

Name:
Title:

By _____
MICHAEL J. OGAZ
City Attorney

“ATTORNEY”

_____, a _____

By _____
Name:
Title:

EXHIBIT A
SCOPE OF SERVICES

At the request of City Attorney or an authorized deputy of the City Attorney, ATTORNEY shall provide the following legal services:

Advise the City on the regulatory framework governing landfill operations in California as applicable to the Newby Island Resource Recovery Park, (NIRRP), and the best long-term strategy including the creation of a database of violations or odor incidents and use of experts which will support the filing of litigation on either a nuisance or regulatory violation basis with the goal of eliminating odors from NIRRP or alternatively the complete closure of NIRRP as a waste disposal and processing facility.

Advise the City on the available legal theories that might be utilized in the litigation and the probability of success of a long-term strategy for eliminating odors from NIRRP.

The scope of services includes representation of the City in such litigation, both at the lower and appellate court level.

EXHIBIT B
COMPENSATION

[SUBJECT TO OUTCOME OF NEGOTIATIONS WITH SUCCESSFUL PROPOSER]

- A. CITY agrees to compensate ATTORNEY for professional services performed in accordance with the terms and conditions of this AGREEMENT at the hourly rates listed below.

The parties agree that the rates and/or personnel set forth herein may be changed without formal amendment to this AGREEMENT. ATTORNEY shall submit any proposed changes and/or additions to the fee schedule to the City Attorney. The City Attorney must affirmatively accept said modifications in writing before it becomes binding under the terms of this AGREEMENT.

- B. In addition to the above compensation, CITY shall reimburse ATTORNEY for actual out-of-pocket costs and expenses reasonably incurred in connection with providing to CITY the services specified in this AGREEMENT, including but not limited to [To be completed].
- C. The maximum amount of compensation to be paid to ATTORNEY under this AGREEMENT, including both payment for professional services and reimbursable expenses, shall not exceed _____ Dollars (\$_____). Any hours worked for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to CITY.

EXHIBIT C
INSURANCE

ATTORNEY, at ATTORNEY's sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by ATTORNEY, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors & Omissions for all professional services.

There shall be no endorsement reducing the scope of coverage required above unless approved by the CITY's Risk Manager.

B. Minimum Limits of Insurance

ATTORNEY shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and

4. Professional Liability Errors & Omissions \$1,000,000 per occurrence/ aggregate limit.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager. At the option of CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, employees, agents and contractors; or ATTORNEY shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's Risk Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
 - a. The City of Milpitas, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, ATTORNEY; products and completed operations of ATTORNEY; premises owned, leased or used by ATTORNEY; and automobiles owned, leased, hired or borrowed by ATTORNEY. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
 - b. ATTORNEY's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of ATTORNEY's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by ATTORNEY shall not affect coverage provided CITY, its officers, employees, agents, or contractors.
 - d. Coverage shall state that ATTORNEY's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Coverage shall contain a waiver of subrogation in favor of the City, its officers, employees, agents and contractors.
2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the City of Milpitas, its officers, employees, agents and contractors.

3. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

F. Verification of Coverage

ATTORNEY shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to ekarlen@ci.milpitas.ca.gov or mailed to the following postal address or any subsequent address as may be directed in writing by the Risk Manager:

City of Milpitas
Risk Management
455 E. Milpitas Blvd.
Milpitas, CA. 95035

G. Subcontractors

ATTORNEY shall not engage any attorney subcontractors under this AGREEMENT.



ADDENDUM **TO REQUEST FOR QUALIFICATIONS**

QUESTIONS AND ANSWERS

1. Who is the owner and operator of the Newby Island Resource and Recovery Park (“Facility”)? Is either that owner or operator a public entity?

A: Newby Island is operated by Allied Waste, owned by Republic Services. It is not a public entity. We believe the property is also owned by Allied.

2. What legal efforts has the City of Milpitas taken in the past to reduce or eliminate the odors from the Facility? What were the results of those efforts?

A: The City filed a CEQA lawsuit challenging a 2011 expansion plan for Newby Island. Milpitas was not successful at the trial court level, but has appealed the case. Appeal is now pending. Original suit was filed in Santa Clara Superior Court.

3. What efforts has the Bay Area Air Quality Management District taken in the past or present to reduce or eliminate the odors from the Facility? What were the results of those efforts?

A: To my knowledge, BAAQMD has taken no action regarding odors other than to set up an odor reporting system that has proven ineffective since it requires on-site confirmation of any reported odors by BAAQMD staff. Often District staff does not respond because the complaint comes after hours or on weekends or by the time they respond, conditions have changed and the odor is no longer present. The result is very few "confirmed" complaints regarding odor are documented although offensive odors occur regularly, sometimes on a daily basis over weeks at a time.